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19 *Kohl's Department Stores, Inc.*

20 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

21 KIRBY SPENCER, individually and
22 on behalf of all others similarly
23 situated,

24 **Case No. 2:14-cv-01646-RFB-DJA**

25 Plaintiff,

26 **STIPULATION AND ORDER**

27 v.
28 KOHL'S DEPARTMENT STORES,
INC.,

29 **TO AMEND SCHEDULING ORDER
AND EXTEND DEADLINES**

30 Defendant.

31 **SECOND REQUEST**

1 Plaintiff Kirby Spencer (“Plaintiff”), by and through his attorneys Craig K.
2 Perry & Associates and McGuire Law, P.C., and Defendant Kohl’s Department
3 Stores, Inc. (“Kohl’s”), by and through its attorneys Pisanelli Bice PLLC and Kelley
4 Drye & Warren LLP, pursuant to Local Rules 6-1, 6-2 and 7-1, 26-4, and Fed. R.
5 Civ. P. 16, hereby stipulate as follows:

6 1. Plaintiff commenced this action on October 7, 2014. (ECF No. 1).

7 2. Pursuant to the Court’s September 30, 2015 Order, Plaintiff filed his
8 First Amended Complaint on October 13, 2015 (ECF No. 50), and Kohl’s filed its
9 Answer to the First Amended Complaint on November 13, 2015 (ECF No. 53).

10 3. On November 24, 2015, this Court issued an Amended Scheduling
11 Order setting a discovery deadline of May 3, 2016, a deadline for Plaintiff to file a
12 motion for class certification of May 27, 2016, and a deadline for Defendant to file
13 dispositive motions 60 days after the Court’s ruling on the motion for class
14 certification (ECF No. 55).

15 4. On March 2, 2016, the Court extended the discovery deadline until July
16 8, 2016, and the Plaintiff’s deadline to file a motion for class certification was
17 extended until August 2, 2016 (ECF No. 59).

18 5. On July 8, 2016, the Parties filed a Joint Motion to Stay Proceedings
19 after a Motion to Transfer was filed in a different case before the Joint Panel on
20 Multidistrict Litigation (“JPML”) (ECF No. 62), which was granted by this Court on
21 July 13, 2016, staying this action (ECF No. 63).

22 6. Following the denial of transfer to the JPML, this Court ordered that
23 the stay be lifted (ECF No. 66), and on November 1, 2016, this Court issued a
24 Scheduling Order, extending the discovery deadline until April 28, 2017, and
25 extending Plaintiff’s deadline to file a motion for class certification until May 26,
26 2017 (ECF No. 70).

27 7. On February 6, 2017, this Court granted Kohl’s Motion to Stay pending
28 the decision of the D.C. Circuit Court of Appeals in *ACA Int’l v. Fed. Commc’n s*

1 *Comm.*, No. 15-1211 (D.C. Cir. 2015) (ECF No. 83).

2 8. On July 12, 2018, this Court entered an Order lifting the stay following
3 the D.C. Circuit's decision, and ordered that the Parties submit a proposed discovery
4 plan and scheduling order, and that Kohl's file a dispositive motion relating to the
5 D.C. Circuit's decision, within two weeks, by July 26, 2018 (ECF No. 84), a
6 deadline that was extended to August 16, 2018, pursuant to stipulation by the
7 Parties, so that the Parties could discuss a potential resolution to this matter (ECF
8 No. 86).

9 9. On March 13, 2019, the Court denied Kohl's pending motion for
10 judgment on the pleadings following the D.C. Circuit's decision in *ACA Int'l*, or in
11 the alternative, for a stay.

12 10. On April 1, 2019, the Court entered the Parties' proposed Joint
13 Discovery Plan and Amended Scheduling Order. (ECF No. 106), setting a discovery
14 close date of June 27, 2019, with Plaintiff's Motion for Class Certification due on
15 October 8, 2019, and any dispositive motions due no later than 60 days after the
16 Court's ruling on the Motion for Class Certification.

17 11. On July 3, 2019, the Court entered the Parties' first Stipulation to
18 Amend Scheduling Order and Extend Deadlines, extending the fact discovery cut-
19 off until August 27, 2019 (ECF No. 112).

20 12. Since the Court's entry of the Parties' Stipulation, the Parties have
21 focused on seeking resolution of the matter and believe that additional time is
22 needed to complete such discussions before utilizing any further resources towards
23 discovery and active litigation of the case.

24 13. Accordingly, Counsel for Plaintiff and for Defendant have met and
25 conferred and agree that the deadline to complete merits discovery should be
26 extended so that the Parties' settlement discussions can be concluded.

27 14. Plaintiff and Defendant agree that the Fact Discovery Cut-Off should
28 be extended for 28 days, until September 24, 2019, with the Parties to file a Joint

1 Status Report by October 1, 2019 regarding whether the case is being resolved or
2 otherwise proposing expert disclosure and dispositive motion deadlines.

3 15. This Stipulation is made in good faith and not for the purpose of delay
4 or for any other improper purpose. No trial date has yet been set in this case and no
5 motions are currently pending.

6 **WHEREFORE**, Plaintiff Kirby Spencer and Defendant Kohl's Department
7 Stores, Inc. hereby stipulate and respectfully request that the Court enter and Order
8 extending the fact discovery cut-off until September 24, 2019 with the Parties to file
9 a Joint Status Report by October 1, 2019.

10

11 Dated: August 27, 2019

Respectfully submitted,

MCGUIRE LAW, P.C.

By: /s/ Evan M. Meyers

Evan M. Meyers (admitted *pro hac vice*)

Attorneys for Plaintiff Kirby Spencer

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13 Dated: August 27, 2019

KELLEY DRYE & WARREN LLP

By: /s/ Lauri A. Mazzuchetti

Lauri A. Mazzuchetti (admitted *pro hac vice*)

Attorneys for Defendant

Kohl's Department Stores, Inc.

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IT IS SO ORDERED.



UNITED STATES MAGISRATE JUDGE

DATED: August 28, 2019